

# **STATEMENT OF SCOPE**

## **Department of Workforce Development**

### **Rule No.**

Chs. DWD 80, 272, and 277

### **Relating to**

Replacing Derogatory or Offensive Terminology with Current, Inclusive Terminology

### **Rule Type**

Permanent

### **Finding/nature of Emergency**

N/A

### **Detailed Description of the Objective of the Proposed Rule**

Replace derogatory or offensive terminology with current, inclusive terminology.

### **Description of Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives**

The proposed rule will replace any derogatory or offensive terminology with current, inclusive terminology as directed by the Governor's Executive Order #15. The proposed rule will replace terminology such as "mentally retarded" with "intellectually disabled," "mental retardation" with "intellectual disability," "handicapped" with "disabled," or other offensive terminology contained in department rules.

Under current rules, the use of the following terms are referenced and should be updated:

- Hearing handicap (ch. DWD 80).
- Mental retardation, retarded persons, handicapped workers and handicapped student (ch. DWD 272).
- Handicap access (ch. DWD 277).

There are no reasonable policy alternatives to implementing these changes.

## **Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)**

Wis. Stat. § 227.11(2)(a): "Rule-making authority is expressly conferred on an agency as follows: . . . Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute. . . ."

Wis. Stat. § 102.16(2)(h): "The department shall promulgate rules establishing procedures and requirements for the fee dispute resolution process under this subsection, including rules specifying the standards that health service fee databases must meet for certification under this paragraph."

Wis. Stat. § 102.12(2m)(g): "The department shall promulgate rules establishing procedures and requirements for the necessity of treatment dispute resolution process under this subsection, including rules setting the fees under par. (f) and rules establishing standards for determining the necessity of treatment provided to an injured employee. Before the department may amend the rules establishing those standards, the department shall establish an advisory committee under s. 227.13 composed of health care providers providing treatment under s. 102.42 to advise the department and the council on worker's compensation on amending those rules."

Wis. Stat. § 102.28(2)(e): "The department shall promulgate rules to implement this subsection."

Wis. Stat. § 102.28(7)(d): "The department shall promulgate rules to implement this subsection."

Wis. Stat. § 102.32(6)(d): "The department shall promulgate rules for determining when compensation for permanent disability shall begin in cases in which the employer or the employer's insurer concedes liability, but disputes the extent of permanent disability."

Wis. Stat. § 102.39: "The provisions of s. 103.005 relating to the adoption, publication, modification, and court review of rules or general orders of the department shall apply to all rules promulgated or general orders adopted under this chapter."

Wis. Stat. § 103.005(1): "The department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings."

Wis. Stat. § 104.035(7)(a) to (c): "MINIMUM WAGE ESTABLISHED BY DEPARTMENT. The department shall promulgate rules providing the minimum wage for all of the following: . . . An employee or worker with a disability covered under a license under s. 104.07. . . A student learner. . . student employed by an independent college or university for less than 20 hours per week."

Wis. Stat. § 104.035(8)(a) and (b): "EMPLOYMENT EXEMPTED BY DEPARTMENT. The department shall promulgate rules exempting from the minimum wage requirements under subs. (1) to (7) all of the following: . . . A person engaged in casual employment in and around an employer's home on an irregular or intermittent basis for not more than 15 hours per week. . . . A person who resides in the home of an employer who, due to advanced age or physical or mental disability, cannot care for his or her own needs, for the purpose of companionship and who spends not more than 15 hours per week on general household work for the employer."

Wis. Stat. § 104.045: "Tips, meals, lodging, and hours worked. The department shall promulgate rules governing all of the following: . . . The counting of tips or similar gratuities toward fulfillment of the employer's obligation under this chapter. . . . The deduction of meals or lodging provided by an employer to an employee from the employer's obligation under this chapter. . . . The determination of hours worked by an employee during which the employee is entitled to the minimum wage established under s. 104.035."

Wis. Stat. § 104.07(1) and (2): "Rules; license to employ; student learners; sheltered workshops. . . . The department shall promulgate rules, and, except as provided under subs. (5), (6), and (7), grant a license to any employer who employs any employee for whom the minimum wage established under s. 104.035 is not commensurate with the employee's ability. Each license so granted shall establish a wage for any such employees of the licensee. . . . The department shall promulgate rules, and, except as provided under subs. (5), (6), and (7), grant a license to a sheltered workshop, to permit the employment of workers with disabilities at a wage that is commensurate with their ability and productivity."

Wis. Stat. § 105.115(5): "RULES. The department shall promulgate rules to implement this section."

Executive Order #15 was signed by the Governor on March 12, 2019 and reads:

"Direct each State Agency to review its administrative rules and replace any derogatory or offensive terminology with current, inclusive terminology. This includes, but is not limited to replacing..."

"Direct each State Agency to complete its review and submit a scope statement to make such changes no later than 90 dates from the date of this order."

### **Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule**

The department estimates that approximately 25 hours will be required to promulgate the proposed rule.

**List with Description of All Entities that May Be Affected by the Proposed Rule**

The proposed rule updates terminology that is considered derogatory and offensive in nature; therefore, no specific entities are affected by the proposed rule.

**Summary and Preliminary Comparison with Any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Proposed Rule**

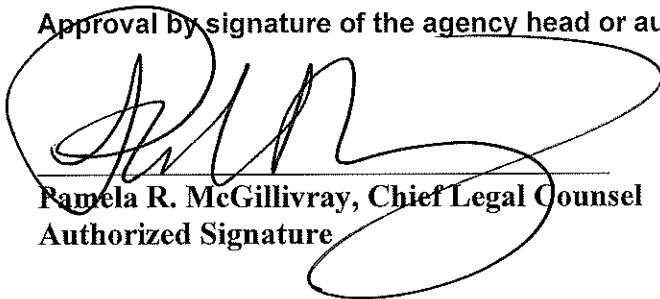
None

**Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)**

The proposed rule will not have an economic impact to any business or small business.

**Contact Person:** Jennifer Wakerhauser, Deputy Legal Counsel, Office of the Secretary, (608) 261-2140; [JenniferL.Wakerhauser@dwd.wisconsin.gov](mailto:JenniferL.Wakerhauser@dwd.wisconsin.gov)

**Approval by signature of the agency head or authorized individual**



Pamela R. McGillivray, Chief Legal Counsel  
Authorized Signature

4/26/2019  
Date Submitted